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DISCUSSION

Quinn on Doing and Allowing

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1.

In “Actions, Intentions, and Consequences: The Doctrine of Doing and Allowing,” Warren Quinn undertakes a discussion of the Doctrine of Doing and Allowing (DDA).¹ He aims to find the formulation of the distinction between doing and allowing that best fits our intuitions, and a theoretical rationale for thinking the distinction morally significant.

Quinn sets out the distinction between doing and allowing by considering two Rescue cases. In Rescue I, you can save either five people who are in danger of drowning in one location or a single person who is in danger of drowning somewhere else, but you cannot save all six. In Rescue II, you can save five people who are drowning, but to do so you must drive over and thereby kill someone who is trapped on the road (this person could otherwise be freed later). Quinn maintains that you are perfectly justified in saving the five in Rescue I, but that it is far from obvious that you are justified in saving the five in Rescue II. The DDA must account for these intuitions. In particular, DDA must discriminate against one kind of agency—which Quinn calls “positive agency”—and in favor of another kind of agency—which he calls “negative agency.” Quinn warns that the distinction between positive and negative agency may not line up exactly with the traditional distinction between action and omission (or even that between doing and allowing). It is nevertheless intended to be continuous with and to capture the idea behind the traditional distinction between doing and allowing.

Quinn defines an agent’s *most direct contribution* to a harmful consequence of his agency as the contribution that most directly ex-

¹*Philosophical Review* 98 (1989): 287–312.

plains the harm. For example, in Rescue I our most direct contribution to the death of the one is our failure to save him; our saving the five explains the death of the one less directly. In contrast, in Rescue II our running over the one most directly explains his death. Employing this definition, Quinn defines harmful *positive* agency as agency in which the agent's most direct contribution to the harm is an action of his own or that of some object controlled by him.² Harmful *negative* agency is agency in which the agent's most direct contribution to the harm is an inaction, or a failure to prevent the harm. Thus, allowing the single individual to drown in Rescue I is an example of negative agency, whereas driving over the single individual in Rescue II is an example of positive agency.

Quinn suggests that this explication captures the idea behind the distinction between doing and allowing—or that it is at least closely related. Further, he claims that the DDA (so understood) can effectively sort through various puzzling cases, including Rescues I, II, III, and IV. In Rescue III, you are travelling on a train to rescue five who are in imminent danger of death. The driver has left you in charge of the train, and you can stop it by pulling on the brakes. You suddenly see someone trapped ahead on the track, and unless you act he will be killed. But if you do stop the train and free the man, the rescue mission will be aborted. In Rescue IV, you are on a train on which there has just been an explosion. Since stopping the train is a complicated business that would take time, you set the train on automatic forward and rush back to the five badly wounded passengers. While attending to them, you learn that a man is trapped far ahead on the track. You must decide whether to return to the cabin to save him or stay with the passengers and save them. Quinn believes that you must stop the train in Rescue III, but that you may stay with the five passengers in Rescue IV. And he claims that the DDA, as he interprets it, implies these results.

Quinn also claims that the DDA provides a solution to the Trolley Problem.³ Quinn applies the DDA to a trolley case in which a

²We have stated the doctrine as we believe Quinn intends it. His formulation is, "Harmful positive agency is that in which an agent's most direct contribution to the harm is an action, whether his own or that of some object" (301).

³Quinn first simply applies the DDA to "trolley cases" (304); but in note 32 (305) Quinn claims that he has provided a "solution to the Trolley

driver of a trolley must choose between letting the trolley run over five persons who are trapped on the track ahead, and shunting the trolley onto a different track on which there is only one person. Initially it might seem that the Trolley Problem presents a counter-example to DDA. This is because intuitively it seems permissible for the driver to shunt the trolley, but DDA would appear not to yield this result (since switching appears to be positive agency, whereas doing nothing seems to be negative agency). To avoid this result, Quinn argues that the driver's choice is really between two different *positive* options, and thus the driver may act in a way which produces less harm. Failing to switch the trolley is argued to be a form of positive agency, because by not switching the trolley the driver intends that it continue forward, and ultimately this leads to the deaths of the five. Since the driver's most direct contribution to the deaths of the five can be traced to the action of an object which he controls (i.e., the trolley that he intends to continue forward), letting the trolley continue on its present course is a form of positive agency.

Finally, Quinn suggests a rationale for the DDA. He points out that negative rights protect agents from harmful positive agency, while positive rights protect agents from harmful negative agency. But negative rights are in general more stringent than positive rights, because they guard the authority of an individual to make decisions about the things most important to him—his mind, body, and life. Thus, it is alleged to be reasonable that the proscription of harmful positive agency should be stronger than the proscription of harmful negative agency.

2.

We wish to take issue with all four claims developed above: that Quinn's explication of the distinction between doing and allowing

Problem." The Trolley Problem was first articulated in Philippa Foot, "The Problem of Abortion and the Doctrine of the Double Effect," reprinted in *Virtues and Vices and Other Essays* (Berkeley: University of California Press, 1978), 19–32; and further developed in Judith Jarvis Thomson, "Killing, Letting Die, and the Trolley Problem" and "The Trolley Problem," reprinted in *Rights, Restitution, and Risk: Essays in Moral Theory*, ed. W. Parent (Cambridge: Harvard University Press, 1986), 78–116.

renders it continuous with the standard conception of the distinction, that the DDA (so explicated) sorts through the four Rescue cases successfully, that it provides a solution to the Trolley Problem, and that its rationale can be given by reference to the relative stringency of negative rights (in the way suggested by Quinn). We shall argue that the four claims face related difficulties. First, we shall show how the notion of positive agency in Quinn is much broader than the ordinary notion. Further, we shall show how this leads to difficulties with both the Trolley Problem and the Rescue cases. Finally, we point out that the alleged rationale for the distinction is inapplicable insofar as the distinction departs radically from the ordinary distinction between positive and negative agency.

2.1

Consider again Quinn's claim about the version of the trolley case he discusses. In this case, the trolley driver must decide what to do: if he does nothing, the trolley will run over five, but if he shunts the train to the right (thereby saving the five), the trolley will run over one. Quinn claims that this is a choice between two types of positive agency. As pointed out above, failure to switch the trolley is alleged to be positive agency, because by not switching the trolley the driver intends that it continue forward, and ultimately this leads to the deaths of the five. (This is positive agency insofar as the driver's most direct contribution to the death of the five is the action of an object which he controls—the trolley.) Further, Quinn claims that exactly the same analysis applies to the version of the trolley case in which the choice belongs to a bystander (rather than the driver).⁴ (In this case a bystander could shunt the train onto the right spur, thus saving five but causing the death of one.) That is, in the bystander version, if the bystander were to refrain from shunting the trolley, this would also count as positive agency. Finally, presumably Quinn would have to say the same thing about a third version of the trolley case, in which there is one person on the main track and five on the side track. How could switching the positions of the potential victims in this way make a difference to

⁴Quinn, 305 n. 32.

whether the bystander's refraining from switching would count as positive or negative agency?

But now it is evident that Quinn is committed to an extremely implausible view—a view which is radically discrepant with the ordinary conception of positive agency. He is committed to the claim that if a bystander in the third case were to refrain from switching the trolley and the trolley were to run over the one person, this would count as *positive* agency. But surely this is a paradigmatic case of “allowing.” It is thus unreasonable to suppose that Quinn has given us a perspicuous explication of our inchoate concept of positive agency; Quinn's notion of positive agency is considerably broader than the ordinary notion.

2.2

It is precisely this feature of Quinn's proposal that renders it incapable of solving the Trolley Problem. The Trolley Problem, as developed by Philippa Foot and Judith Thomson, involves various pairs of hypothetical cases. The problem is to develop a satisfactory principle which distinguishes the members of the various case pairs. It will be useful here simply to focus on one such pair.

Let us call the first case Bystander. It is the second version of the trolley case developed above. That is, a bystander can either shunt the trolley to the right, thereby saving the five but causing the death of one, or he can refrain from shunting the trolley, which would result in the deaths of the five. Judith Thomson thinks that it is plausible that one may shunt the trolley to the right in Bystander, thereby saving the five.

Consider now Fat Man.⁵ A person is standing on a bridge watching a trolley hurtling down the track toward five innocent persons. The brakes have failed, and the only way in which the person can stop the train is to impede its progress by throwing a heavy object in its path. A fat man is standing on the bridge next to the person, and the person could push him over the railing and onto the track below. If he does so, the fat man will die, but the five will be saved. (One can imagine that the person would not actually need to push the fat man to get him to topple; perhaps he is peering over the

⁵Judith Jarvis Thomson, in Parent, 83–84.

handrailing, watching the lamentable scenario below, and the person can simply wobble the handrailing, thus causing him to topple.) Thomson thinks that it is *impermissible* to save the five in this case; indeed, she says, "Everybody to whom I have put this case says it would not be [permissible to kill the fat man]."⁶

Now we can state (one version of) the Trolley Problem as follows. In virtue of what is it permissible to save the five in Bystander but not in Fat Man? The challenge is to produce a principle that distinguishes these cases and that generalizes suitably. It is simply a *presupposition* of the Trolley Problem that it is permissible to save the five in Bystander but not in Fat Man. A *solution* to this problem (which is what Quinn has allegedly offered us) would present a suitable method of differentiating the cases. (In contrast, a *dissolution* of the problem might provide reason to question the presupposition.)⁷

But consider now Fat Man. Quinn's version of the DDA is supposed to imply that it is impermissible in this case to save the five. But it seems that by exactly the sort of reasoning that led Quinn to say that refraining from switching the trolley in Bystander would (on his approach) be positive agency, we should conclude that refraining from pushing the fat man would (on Quinn's approach) count as positive agency. And of course it would follow that it would be permissible in Fat Man (as in Bystander) to save the five. By reasoning parallel to that employed by Quinn in Bystander, we have it that in refraining from pushing the fat man, one intends that the trolley continue forward. But then one's most direct contribution to the deaths of the five is the action of an object (the trolley) over which one has control. Thus, Quinn has *not* provided a solution to the Trolley Problem. And the difficulty here stems from the same source identified above—an overly broad account of positive agency.

⁶Thomson, in Parent, 109.

⁷For preliminary work toward a dissolution of the problem, see John Martin Fischer, "Tooley and the Trolley," *Philosophical Studies* 62 (1991): 93–100; "Thoughts on the Trolley Problem," in *Ethics: Problems and Principles*, ed. John Martin Fischer and Mark Ravizza (Fort Worth, Tex.: Harcourt Brace Jovanovich, 1991), 308–17; "The Trolley and the Sorites," *Yale Journal of Law and the Humanities* 4 (1992): 105–26; and Fischer and Ravizza, "Thomson and the Trolley" (manuscript).

2.3

Exactly the same sort of difficulty plagues Quinn's discussion of the Rescue cases. It is supposed to follow from Quinn's DDA that it is impermissible to save the five in Rescue III (in which you are at the controls of the train and must run over one to save the five), whereas it is permissible to save the five in Rescue IV (in which you have rushed back to save five wounded passengers and the train is on automatic pilot). But we do not see how Quinn's account has this result.

Consider Rescue IV. Why exactly shouldn't one reason as follows? If you refrain from rushing back to the controls of the train, you intend that it continue forward. This leads to the death of the one. Thus, your most direct contribution to the death of the one can be traced to the action of an object (the train) over which you have control. Your behavior in saving the five would then seem to count as positive agency, and the putative difference between Rescue III and Rescue IV would disappear.

Quinn might attempt to defend his DDA as follows. He might say that there is a principled way of distinguishing between Bystander, on the one hand, and such cases as Fat Man and Rescue IV, on the other. That is, Quinn might say that in Fat Man and Rescue IV the agent would *not* have the relevant intentions about the train, insofar as intentions don't "transfer" in the way required by our argument. So, for example, whereas the person in Fat Man would have the intention to refrain from pushing the fat man, this does not imply that he has any intention *about the trolley*. Similarly, whereas you would have the intention to attend to the five in Rescue IV, this does not imply that you have any intention about the train. In contrast, in Bystander your intention would be not to shunt the trolley, which implies an intention that it continue forward: the original intention is about the trolley, and thus no *transfer* of intentions from one object to another is required.

Note, however, that the claim that intentions *never* transfer from one object to another is too strong. Consider a case similar to Bystander, Bystander*. In Bystander* a train is coming down the track. If you do nothing it will continue along, thus activating a mechanism that both causes it to slow down (and ultimately stop) and causes *another* train (ahead on the track) to start up and ultimately run over the five. Presumably, Bystander and Bystander*

are morally equivalent; specifically, if it would be permissible for the bystander to shunt the trolley in Bystander it would also be permissible for the bystander to shunt the trolley in Bystander*. But if intentions never transfer from one object to another, then Quinn must distinguish the two cases. This is because (on the supposition that intentions never transfer) Quinn must consider the bystander's refraining from shunting the train in Bystander* to be *negative* agency. Thus, on the supposition in question, Quinn must say that whereas it is permissible to shunt in Bystander, it is impermissible to shunt in Bystander*—an evidently implausible result.

What is necessary, then, in order to defend Quinn's DDA is some sort of "restricted transfer" of intentions. That is, whereas intentions must be transferred in a case such as Bystander*, they cannot be transferred in such cases as Fat Man and Rescue IV. Can some sort of restricted notion of transfer of intentions be developed that implies these results (congenial to Quinn's purposes)?

We do not see how to formulate a perfectly general restricted transfer principle. But it might be worthwhile to consider the following constraint on the transfer of intentions within a limited domain of cases. Consider the class of cases in which there is "already" a causal sequence in motion that threatens to result in some harm. The following specifies the *only* condition in which transfer of intentions is permissible: One can transfer intentions across any of the elements in the causal chain that are necessary to the chain's resulting in the harm.

This restricted notion of transfer of intentions appears to imply the results required by Quinn. In Bystander*, if the bystander refrains from shunting the train, he would have an intention about the newly activated train: the intention to refrain from shunting the first train implies an intention about the second train. Thus, as in Bystander, one has a choice between two forms of positive agency. Further, the restricted transfer principle seems to block the transfer of intentions in such cases as Fat Man and Rescue IV. Take, for example, Fat Man. One might have an intention about the fat man—to save his life. Given the restriction on transfer of intentions, this does *not* imply an intention about the train, insofar as the fat man is in the relevant sense causally isolated from the train. A similar point applies to Rescue IV. Whereas one can have an intention about the five, this need not imply an intention about

the train, insofar as the five are in the relevant sense causally isolated from the train. So if one attends to the five, one's most direct contribution to the death of the one would be *negative* agency.

But we do not think that this restricted transfer principle is acceptable. To see this, imagine that the situation is as in Rescue IV except for the following changes. When you run back to attend to the five, you see that they all have broken necks and are lying on the throttle of the train in such a way as to keep it going. The only way to stop the train is to move all of them, but this will kill them. Call this case Rescue V. In Rescue V the five wounded individuals lying on the throttle are necessary parts of a causal chain that threatens some harm—the death of the one on the track ahead. In refraining from moving the five, one would have an intention about the five—to save their lives. Given the situation, this implies an intention about their lying on the throttle—that they continue to do so. And an intention that the wounded individuals continue to lie on the throttle implies an intention about the train—that it continue forward. The restricted transfer principle cannot block this transfer of intentions; indeed, it explicitly licenses it. If this is correct, then Quinn must assimilate Rescue V to Rescue III and distinguish it from Rescue IV. But it is highly implausible to suppose that Rescue IV and Rescue V are morally different in such a way that it would be permissible to save the five in Rescue IV but not in Rescue V.

To summarize: Quinn himself does not discuss the issue of transfer of intentions. We have pointed out that if intentions are allowed to transfer in intuitively plausible ways, then Quinn's explication of DDA is unacceptable: the account of positive agency is too broad. Further, we have argued that Quinn can adopt neither a blanket proscription on transfer nor a certain restricted notion of transfer. We cannot think of any other plausible restriction on transfer of intentions that would render Quinn's DDA acceptable.

2.4

In this paper we have pointed out that Quinn's explication of the distinction between positive and negative agency—apart from any restriction on transfer of intention, which is not discussed by Quinn—renders his notion of positive agency excessively broad. We have argued that this leads to difficulties in the Trolley Problem and Rescue cases. Finally, we note that the disparity between

the ordinary notion of positive agency and Quinn's notion renders his alleged rationale for the DDA inapplicable.

On the ordinary notions of positive and negative agency, positive agency tends to result in violations of *negative rights*, which are supposed (by some) to be more stringent than positive rights. But on Quinn's account, positive agency departs significantly from the ordinary notion, and thus there is no reason to think that on his account positive agency will tend to result in violations of negative rights. Indeed, think again about the situation described above in which a bystander simply refrains from shunting a train that then runs over one person; Quinn must deem this positive agency. Compare it with Rescue II, in which the only way of saving the five involves killing the one. It is unilluminating to claim that the bystander in the above trolley case violates a negative right of the one, whereas you simply fail to secure a positive right of the one in Rescue II. Note that the individuals' interests and the nature of the individuals' potential losses in both cases (the relevant version of Bystander and Rescue II) are precisely the same. Insofar as Quinn's notion of positive agency departs radically from the ordinary notion, the correlation between positive agency and negative rights is attenuated, and Quinn's rationale for DDA disappears.⁸

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